



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Reach All, Inc.

File: B-229772

Date: March 15, 1988

DIGEST

Protest that specification unduly restricts competition is denied where the agency presents a reasonable explanation in support of the specification as necessary to meet its minimum needs and protester, while disagreeing with agency's technical analysis, fails to show that the restriction is clearly unreasonable.

DECISION

Reach All, Inc. (RAI), protests that a specification requirement in request for proposals (RFP) F41608-87-R-2036 is unduly restrictive of competition. The RFP, issued by the San Antonio Air Logistics Center, Kelly Air Force Base, Texas, solicits truck mounted aerial servicing platforms for C-5 aircraft maintenance and deicing.

We deny the protest.

The original solicitation, a 100-percent small business set-aside, sought 9 units and required that the equipment have a horizontal reach of at least 30 feet. RAI submitted its proposal and, in separate correspondence, suggested that the Air Force amend the specification to require a minimum horizontal reach of 44 feet; 30 feet was perceived by RAI as insufficient to accomplish the required tasks.

Due to this and other questions raised by potential contractors, the Air Force postponed the April 24, 1987, closing date. While preparing to answer these questions, the Air Force found that the 30-foot reach requirement was

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erroneous.^{1/} Thus, in November 1987, the Air Force issued a replacement solicitation package which, among other revisions, increased the quantity to 14 units^{2/} and made 5 changes to the purchase description including an increase in the horizontal reach specification from 30 to 63 feet. After this protest was filed, the Air Force consulted with its using activities and determined that some platform activities requiring a 63-foot horizontal reach could be performed with a shorter reach by using a safety harness. However, deicing of the tail section of the C-5 aircraft required an absolute minimum of a 58-foot reach and could not be accomplished by use of a harness. Thus, an amendment was issued to reflect the 58-foot specification. A new proposal closing date was also set, but award was stayed pending the outcome of the protest.

When a protester challenges a specification as being unduly restrictive of competition, the burden initially is on the procuring agency to establish prima facie support for its contention that the restriction is needed to meet its minimum needs. Once the agency establishes this prima facie support, the burden shifts to the protester to show that the requirement complained of is clearly unreasonable. Monitor Security & Control Systems, Inc., B-227643.2, Sept. 15, 1987, 87-2 CPD ¶ 253; Rolm Corporation, B-214052, Sept. 11, 1984, 84-2 CPD ¶ 280.

RAI complains that the specification change from 30 feet to 63 feet, and then to 58 feet, excludes it from the current

^{1/} In 1969, a preliminary specification requiring a 30-foot horizontal reach was rejected by the Air Force because, after review, the agency found it would be inadequate for timely deicing. As a result, a minimum reach of 60 feet was established. Calavar Corporation designed and built the original servicing platform with a horizontal reach of 63 feet in order to meet the Air Force specification.

^{2/} In the earlier protest correspondence, RAI objected to the addition of five units to the original solicitation. In its report, the Air Force responded that in the process of answering contractors' questions it concluded that it needed the additional units. Since RAI failed to address this matter in its comments, we consider this issue abandoned. PacOrd, Inc., B-224249, Jan. 5, 1987, 87-1 CPD ¶ 7. In any event, since the Air Force amended the RFP prior to the opening of proposals and advised potential offerors of the increased requirement, we find nothing objectionable in the Air Force action. See Federal Acquisition Regulation § 15.606 (FAC 84-16).

RFP; is unduly restrictive of competition; and as a practical matter, results in a sole-source procurement because only one offeror, Calavar, is capable of meeting the specification. RAI urges that its unit's 51-foot reach is sufficient for the Air Force requirement.^{3/}

According to the Air Force, its flight line mission with associated "surge requirements" and turnaround time during the launch/recovery sequence dictate that the aircraft be repaired and serviced in the minimum time possible. Setting up, stowing, and repositioning the servicing platform require extensive time and make it essential that required tasks be performed from one position. The Air Force explains that the 58-foot horizontal reach specification (supplemented by safety harness) reflects its absolute minimum needs because it offers the optimum maintenance capability and minimizes the amount of movement of the unit in close proximity to the aircraft. With a 58-foot reach, such a unit has access to the top of the tail section, all along the fuselage, and the tip of the wing. It can also be positioned far enough away from the aircraft to enable other maintenance operations to be performed timely and without interference with other equipment.

The Air Force further states that this requirement is particularly relevant to deicing the aircraft, which must be accomplished within a specified period of time depending upon the temperature and conditions. A horizontal reach of less than 58 feet would require repositioning the unit

^{3/} The protester is "excluded" from the procurement only in the context that its standard line of equipment does not include a model with a minimum horizontal reach of 58 feet, although it is free to design and construct a unit to the Air Force's specifications. In addition, we note that a third manufacturer other than the protester or Calavar has represented to our Office that it is prepared to make an offer without taking any exception to the RFP's specification. While Calavar may have an apparent advantage due to its prior experience in producing high reach units for the Air Force, this does not make this an improper sole-source procurement. Where, as here, such a competitive advantage is not due to preference or unfair action by the government, the government is not required to equalize the offerors' competitive positions. See Chicago City Wide College, B-218433, Aug. 6, 1985, 85-2 CPD ¶ 133. In any event, the fact that not every potential competitor is able to meet a specification demonstrates no impropriety where, as we conclude below, the specification reflects the agency's minimum needs. See Gerber Scientific Instrument Company, B-197265, Apr. 8, 1980, 80-1 CPD ¶ 263.

numerous times and positioning could become so critical that the aircraft would have to be moved. Then, terrain configuration, associated ground equipment, and ramp obstructions such as blast fences, drains, and service outlets could create problems. Without the 58-foot reach, the agency states, the need to reposition the unit with its attendant delays could make it impossible to deice the aircraft within the specified time.

RAI disagrees with the Air Force technical analysis and argues that its unit, with a 51-foot reach, can accomplish the deicing of the aircraft as well as the specified unit. However, a diagram provided by RAI for the purpose of illustrating its argument demonstrates that to approximate the Air Force's 58-foot radius of reach, the RAI unit must be positioned closer to the aircraft. This means of accomplishing the Air Force's needs may satisfy the reach requirements, but does so at the expense of closer proximity to the aircraft. Among other things, the 58-foot requirement ensures that the unit will be far enough away from the aircraft to avoid interference with other equipment.

We find that the Air Force has established the required prima facie support for its minimum specification and that RAI has failed to demonstrate that the specification is clearly unreasonable. We therefore find nothing objectionable in the Air Force statement of its minimum needs.

Quite apart from the technical analysis which we have discussed above, RAI points to several other circumstances which it claims are inconsistent with the Air Force's assertion that its minimum need is for a 58-foot horizontal reach. RAI asserts that the Air Force had "approved" its unit in 1981; that it was orally assured by Air Force personnel that it would be an "acceptable bidder" for this solicitation; and that it supplies its unit to Lockheed, manufacturer of the C-5 aircraft, for use in maintenance. None of these assertions changes our conclusions.

RAI bases its first assertion upon 1981 correspondence from an Air Force contracting officer who opined that an RAI unit would satisfy Air Force requirements. However, we note that 1980 correspondence emphasized the requirement that the upper boom of the unit be able to telescope so that the tail section would be accessible without repositioning the unit. Further, 1986 Air Force correspondence recognized that the RAI unit differed from the existing Calavar units and that a new procurement document had a requirement for an anti-icing delivery system. The Air Force never ordered any RAI units.

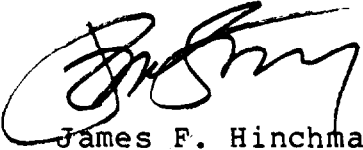
It would appear that the RAI unit may have met Air Force needs in 1981 for some requirements, but not all. The Air

Force's present explanation of its minimum needs convinces us that the horizontal reach specification is necessary to deicing procedures and the RAI unit "approved" in 1981 does not meet that specification. The determination of an agency's minimum needs and the best method of accommodating those needs are primarily matters within the agency's discretion. CAD/CAM On-Line, Inc., B-226103, Mar. 31, 1987, 87-1 CPD ¶ 366. Since RAI has not shown the challenged specification to be unreasonable, we will not disturb the Air Force's exercise of discretion.

As to the second assertion, the Air Force denies that RAI was advised that its unit would be acceptable to fulfill the requirements of the current solicitation. The Air Force states that RAI was advised only that the next (that is, the present) solicitation would be under full and open competition rather than a sole source, emergency buy. Even assuming, arguendo, RAI was led to believe that its unit would meet the current solicitation's specifications, the government is not liable for the erroneous acts or advice of its officers, agents, or employees, even if committed in the performance of their official duties. A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD ¶ 194.

Finally, regarding RAI's supply of units to Lockheed for use in the maintenance of C-5 aircraft, there is no evidence that Lockheed's requirements are necessarily the same as those of the Air Force. For example, it may be inferred that Lockheed, as manufacturer, does not operate under the same mission oriented time constraints for maintenance as does the Air Force.

The protest is denied.


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